FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 13, 1992

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-28

Stevenson H. Waltien, Treasurer
Leahy for U.S. Senator Committee
P.O. Box 53
Burlington, VT. 05402-0053

Dear Mr. Waltien:

This responds to your letter of July 10, 1992, requesting an advisory opinion regarding the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to the loan of funds by the Leahy for U.S. Senator Committee ("the Committee") to the Vermont Community Loan Fund ("the Fund") and the subsequent repayment of those funds.

The Committee is the principal campaign committee of Senator Patrick J. Leahy who is a candidate for re-election in 1992. You state that the Committee wishes to make a $50,000 interest free loan to the Fund. According to the information you have presented, the Fund is a non-profit corporation promoting low income housing.[1/]

A letter of intent included in your request, describing the proposed transaction, states that the Committee will provide $50,000 to the Fund on or before June 30, 1992. The investment must be repaid in full on or before June 30, 1993, or upon the Committee's earlier written request for repayment. The letter explains that an earlier request for repayment will not be made unless circumstances make it necessary and, in any event, no request will be made before September 30, 1992. Final execution of the transaction is made contingent on a favorable Commission decision in response to the Committee's advisory opinion request. In the event the transaction is not permitted by the Commission, the loan funds must be returned to the Committee within five business days of such notification. In light of that requirement, your request seeks a determination whether the transaction is in accordance with the Act and Commission regulations.

The Commission has previously stated that, under the Act and Commission regulations, a candidate and the candidate's campaign committee have wide discretion in making expenditures to influence the candidate's election, but may not convert excess campaign funds to personal use. 2 U.S.C. 431(9) and 439a; Advisory Opinions 1992-4 and 1992-1.[2/] In past opinions, the Commission has determined that political committees may use their funds to make charitable donations to qualified tax exempt corporations (Advisory Opinions 1992-21 and 1985-9), to create a non-profit tax-exempt foundation (Advisory Opinion 1992-14) and to fund a private trust for a minor child (Advisory Opinion 1986-39).

The Commission notes, however, that your transaction differs from the above factual patterns. Rather than making a gift, the Committee wishes to loan funds to the charity with full repayment expected.[3/] The eventual repayment raises the prospect of the transfer of prohibited funds to the Committee. In the past, the transfer of funds from impermissible sources to political committees through loan repayments has been prohibited. See AFL-CIO v. FEC, 628 F.2d. 97 (D.C. Cir, 1980) and a Commission enforcement matter, MUR 2547.[4/] Commission regulations specifically provide that where a political committee receives the repayment of a loan, the repayment cannot consist of funds from corporate or union treasuries. See 11 CFR 100.7(a)(1)(i)(E) and Advisory Opinion 1981-17 (repayment by state party committee of loans from a Federal candidate committee must be from lawful sources).

Under the facts you have presented, the source of repayment of Committee's loan would apparently be from the Fund's corporate treasury, and prohibited by Commission regulations at 11 CFR 100.7(a)(1)(i)(E). The Commission, therefore, concludes that the Fund's repayment of the proposed loan is not permissible under the Act and Commission regulations.[5/] Given the special circumstances presented in your request, the Committee is permitted to obtain the return of its $50,000 loan to the Fund within five days after the receipt of this opinion.

The Commission expresses no opinion as to any application of the rules of the United State Senate to your activity or any tax ramifications, since those issues are outside the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Joan D. Aikens
Chairman for the Federal Election Commission

Enclosures (AOs 1992-21, 1992-14, 1992-1, 1992-4, 1990-2, 1986-39, 1985-9 and 1981-17)

ENDNOTES

1/ According to the Internal Revenue Service, the Fund is tax exempt under 26 U.S.C. 501(c)(3). The documents submitted with the request include the Fund's articles of incorporation and bylaws. They indicate that the Fund's general purpose is "to provide loans and financial, technical and other support to community based housing and economic development projects for low income and other disadvantaged households." The Fund also seeks to "promote models of ownership or tenant control which prevent speculation and guarantee that housing remains affordable for successive generations." The Fund issues "Social Investment Notes" to persons who may want to invest "in a socially-conscious manner within Vermont." It offers a range of options "as to rates, terms and repayment schedules." Additional information contained in a brochure states that the Fund had, as of March 20, 1992, assets in investments and gifts totaling $1,442,125.

2/ Because your request does not indicate that Senator Leahy will obtain any personal benefit from the transaction, the Commission need not address whether the personal use prohibition of 2 U.S.C. 439a would apply in this case.

3/ In Advisory Opinion 1990-2, a candidate committee wished to collateralize a bank loan sought by a state party committee by placing a $20,000 certificate of deposit with the lender bank. The Commission treated this as the equivalent to a transfer of funds for the benefit of the party committee expressly permitted by section 439a. See also Advisory Opinion 1981-17.

4/ The AFL-CIO v. FEC case involved the repayment of interest free loans made by the AFL-CIO's separate segregated fund to the AFL-CIO itself. The court upheld the Commission position that repayment was barred under 2 U.S.C. 441b which forbids corporate and union contributions. Referring to that prohibition, the court stated that "no part of the monies of a union's segregated fund should be commingled with regular dues money even on a temporary basis..." See AFL-CIO v FEC, 628 F.2d at 100. MUR 2547 dealt with the repayment of loans made by the Northern Kentucky Housing Industry PAC to its connected organization, Home Builders Association of Northern Kentucky, an incorporated entity. The Commission concluded that the repayment of the loan violated the ACT.

5/ The Commission notes that while the transaction, as presented, is foreclosed by the Act and Commission regulations, the Act would not prohibit the Committee from making a gift to the Fund of either $50,000 or an amount equal to the interest on a $50,00 loan. Further, as in Advisory Opinion 1990-2, the Committee could invest its funds with a commercial bank selected by the Fund, and the bank could then make a loan to the Fund that was secured by the Committee's funds as collateral. The Commission cautions that if the Fund defaults on the loan and the collateral is attached by the lender bank, the Committee may not collect or receive repayment of its investment from the Fund, or from any other person on behalf of the Fund, given the prohibitions in 11 CFR 100.7(a)(1)(i)(E).